IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

WP(C).No. 29135 of 2007(R)

AGAINST THE ORDER DATED 22/08/2007 IN EP.405/05 IN OS.841/2000 of SUB COURT,THRISSUR

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PETITIONERS:

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1. MURALEEDHARAN,S/O. KUNNATHERY DEVAKI AMMA,KIZHAKKUMPURAM DESOM,MANAKKODY, THRISSUR.

2. KUMARI,W/O. KUNNATHERY MURALEEDHARAN KIZHAKKUMPURAM DESOM,MANAKKODY, THRISSUR.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS:

SOUMYA KURIES & LOANS (P) LTD THRISSUR,REPRESENTED BY ITS MANAGING DIRECTOR DAVY V. THATTIL, S/O. PIDIYATH VAREETH, CAICO ROAD CHELAKKOTTUKARA DESOM,OLLUR VILALGE, THRISSUR TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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M.N.KRISHNAN, J

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W.P.(C) No. 29135 OF 2007

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Dated this the 3rd day of October 2007

JUDGMENT

This writ petition is filed by the defendants in the suit challenging the order of the Sub Court, Thrissur in E.A.No.128/2007. The plaintiff obtained a decree and when an execution petition was filed, an agreement was entered into between the parties whereby it was decided to assign 5 cents of property to the decree holder whereby he can sell the same and realised the decree debt. Along with the petition, petitioners also produced an agreement as well as the sketch. The court below, just on the representation of the decree holder and on a mere perusal of the agreement, arrived at a conclusion that what the decree holder says is correct. When both the parties with their eyes open had entered into an agreement and a sketch is attached and if it is that property which is agreed to be transferred, then the decree holder cannot escape by contending that it will be difficult to sell it. The court below should have bestowed its attention to find out which is the property that the parties agreed for transfer and if it is convinced that it is the property shown in the sketch, then necessarily the

court is bound to respect that agreement and pass orders accordingly. At a later point of time, the inconvenience or convenience of one of the parties shall not be a criteria to disregard the terms of the agreement executed between the parties.

Therefore the order under challenge is set aside and the matter is remitted back to the court below for fresh consideration in accordance with the directions contained in the previous paragraph. Since I am disposing of the matter at the admission stage itself, the court shall fix a date of appearance, intimate the decree holder and dispose of the matter after hearing both sides.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-